IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 19

OKLAHOMA PACKING COMPANY, FORMERLY WILSON & CO., INC., OF OKLAHOMA, AN OKLAHOMA CORPORATION, AND WILSON & CO., INC. OF OKLAHOMA, A DELAWARE CORPORATION,

Petitioners,

vs.

OKLAHOMA GAS AND ELECTRIC COMPANY, A CORPORATION; OKLAHOMA NATURAL GAS COMPANY, A CORPORATION; W. T. PHILLIPS, H. J. CRAWFORD, J. V. RITTS, LEONARD C. RITTS, R. W. HANNAN, A. W. LEONARD AND R. C. SHARP, THE DIRECTORS OF OKLAHOMA NATURAL GAS COMPANY A DISSOLVED CORPORATION; AND OKLAHOMA NATURAL GAS CORPORATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

W. R. BROWN,
PAUL WARE,
Counsel for Petitioners.

INDEX.

TABLE OF CASES.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 19.

OKLAHOMA PACKING COMPANY, FORMERLY WILSON & CO., INC., OF OKLAHOMA, AN OKLAHOMA CORPORATION, AND WILSON & CO., INC. OF OKLAHOMA, A DELAWARE CORPORATION,

Petitioners,

vs.

OKLAHOMA GAS AND ELECTRIC COMPANY, A CORPORATION; OKLAHOMA NATURAL GAS COMPANY, A CORPORATION; W. T. PHILLIPS, H. J. CRAWFORD, J. V. RITTS, LEONARD C. RITTS, R. W. HANNAN, A. W. LEONARD AND R. C. SHARP, THE DIRECTORS OF OKLAHOMA NATURAL GAS COMPANY A DISSOLVED CORPORATION; AND OKLAHOMA NATURAL GAS CORPORATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

In order to clarify the issues, overcome certain inferences and dispose of certain decisions, this reply brief is filed.

REPLY TO RESPONDENTS' STATEMENT.

Respondents' statements on page 3 of their brief that the opinion in *Oklahoma Gas & Electric Co., et al.* v. *Wilson & Co., Inc. of Oklahoma, et al.*, 54 F. (2d) 596 "became final" and "this suit in the United States District Court was dismissed * * * and refiled" is confusing. The Tenth Circuit Court of Appeals reversed the decree of a single district judge dismissing the respondents' bill of complaint and remanded the cause to that Court with directions to proceed to a final disposition of the cause consistent with its opinion. (54 F. (2d) 596, 599.) The cause was remanded and the respondents filed an amended and supplemental bill adding Wilson & Co., Inc. of Oklahoma, a Delaware corporation, as a party defendant, and further sought to enjoin the action upon the supersedeas bonds in the State Court. The respondents dismissed that suit without prejudice and thereafter commenced a new suit which is the one now before this Court (R. 59-60, 183).

To further clarify the last paragraph on page 4 of respondents' brief, it should be pointed out that the decision of the Supreme Court of Oklahoma in *Oklahoma Gas & Electric Co.* v. *Wilson & Co.*, 178 Okla. 604, was rendered September 15, 1936, and a rehearing denied January 5, 1937. The decree of the United States District Court in the case at bar was dated and filed September 10, 1937 (R. 109-110).

Reply to Respondents' Point I.

Respondents undertake to avoid the rule that the Federal Court should have applied the law of Oklahoma as declared by its highest court, by the suggestion that they

"could not anticipate in 1930 that the Supreme Court of the State, in 1935, would change its position in regard to the capacity in which it reviewed a certain class of orders appealed from the Corporation Commission" (Page 6, Respondents' brief).

This suggestion is without merit. When the United District Court entered its decree herein on September 10, 1937 (R. 109) and when it was affirmed by the Circuit Court of Appeals on December 19, 1938 (R. 212), the law of Oklahoma, as construed by the State Supreme Court that it functioned judicially in such cases, was well settled by *Oklahoma Cotton Ginners' Ass'n.* v. *State*, 174 Okla. 243, decided October 17, 1935, and *Oklahoma Gas & Electric Co.* v. *Wilson & Co., Inc.*, 178 Okla. 604, decided September 15, 1936.

The cases cited in the footnote to page 14 of petitioners' brief indicate that, long prior to 1930, it was understood that the Supreme Court of Oklahoma functioned judicially in cases affecting gas companies. See also *Pierce Oil Corp., et al.* v. *Phoenix Refining Co.*, 259 U. S. 125, affirming 79 Okla. 36; and *Okmulgee Gas Co.* v. *Corporation Commission*, 95 Okla. 213.

While it is true that some confusion existed between 1932 and 1935 as to whether the Supreme Court of Oklahoma functioned legislatively or judicially in its review of orders of the Corporation Commission affecting gas companies, the principal cause of this confusion was occasioned by the Tenth Circuit Court of Appeals in *Oklahoma Gas & Electric Co., et al.* v. *Wilson & Co., Inc. of Oklahoma, et al.*, 54 F. (2d) 596, decided December 21, 1931.

In *McAlester Gas & Coke Co.* v. *Corporation Commission, et al.*, 101 Okla. 628 (page 5, Respondents' brief), the only question decided was whether supersedeas should be granted pending an appeal.

In *Oklahoma Natural Gas Co.* v. *Russell*, 261 U. S. 290, it was admitted that the Supreme Court of Oklahoma acted in a legislative capacity. Obviously, as indicated in the *Ginners'* case, *supra*, page 251, this Court assumed, without deciding, that the appeal was analogous to appeals in transportation and transmission company rate cases.

In *City of Poteau* v. *American Indian Oil & Gas Co.* (1932), 159 Okla. 240, the Oklahoma Supreme Court followed the decision in 54 F. (2d) 596, and the confusion in the Oklahoma courts began. The Oklahoma Supreme Court in the *Ginners'* case, *supra*, page 251, in addition to calling attention to the Circuit Court's erroneous conclusion in 54 F. (2d) 596, points out that the parties stipulated that that Court might fix a rate and the question of authority of that Court was not presented.

The case of *Corporation Commission of Oklahoma, et al.* v. *Cary*, 296 U. S. 452, was commenced and decided by the District Court during this period of confusion in the Oklahoma decisions, and the District Court followed the *City of Poteau* case, *supra*, which was the last pronouncement of the Supreme Court of the State of Oklahoma. This Court points this out in 296 U. S. 452, at page 458, and says that under these circumstances it is not necessary to analyze the decision in the *Ginners* case decided subsequent to the decision of the *Cary* case by the District Court.

When the case at bar was decided by the District Court and affirmed by the Tenth Circuit Court of Appeals, this confusion had been cleared up by the *Ginners* case, and the *Wilson* case, *supra*, and the District Court was without authority to review and reverse the judicial findings of the Oklahoma Supreme Court.

Reply to Respondents' Point II.

In *Madisonville Traction Co.* v. *St. Bernard Mining Co.*, 196 U. S. 239, cited on page 8 of Respondents' brief, an injunction was issued to stay a proceeding in a state court which had been duly removed to the federal court.

The question in *Steelman* v. *All Continent Corporation*, 301 U. S. 278, was the power of a court of bankruptcy to enjoin prosecution of a suit in another federal court.

Reply to Respondents Point III.

The errors relied upon in support of petitioner's objection to the venue have been adequately and properly assigned on appeal to the Tenth Circuit Court of Appeals (R. 186, No. 2; R. 189, No. 10); and in this Court (Petition for Certiorari, page 6).

Petitioner not only promptly objected to the venue of the District Court and preserved this objection in its answer (R. 64), but also requested an additional finding of fact (R. 113, Par. 6) and a conclusion of law (R. 115, Par. 10) on this point at the close of the hearing, which were denied and exceptions allowed (R. 117).

We respectfully submit that petitioner's objection to the venue was properly preserved and the case of *Southern Pacific Co.* v. *Denton*, 146 U. S. 202, is controlling.

Respectfully submitted,

W. R. Brown,
Paul Ware,
Counsel for Petitioners.